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USAID-TIJARA PROVINCIAL ECONOMIC GROWTH PROGRAM

INDUSTRIAL LICENSING IN IRAQ



Date June 25, 2012

This report was produced for review by the U.S. Agency for International Development (USAID). It was prepared by The Louis Berger Group, Inc.

Contract No. 267-C-00-08-0050-00

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ACRONYMS

USAID	United States Agency for International Development
COSQC	Central Office of Standards and Quality Control
IDA	Industrial Development Authority
MIM	Ministry of Industry and Minerals
MOLSA	Ministry of Labor and Social Affairs

1. Introduction

As in other aspects of Iraqi economic life, rules for industrial projects are governed by both pre-war and post-war laws and regulations. At least five governmental authorities will have permitting authority over a typical industrial enterprise if it wishes to obtain the tax benefits of investment incentive laws. The permission of the Chamber of Commerce and Ministry of Trade will be required for business registration. The National or Provincial Investment Commissions, or Industrial Development Authority of the Ministry of Industry and Minerals will determine whether investment incentive licenses are issued. The Ministry of Environment and local municipal government will also be involved for site and activity clearance, and the Ministry of Health and Ministry of Labor and Social Affairs will also have regulatory oversight over industrial projects. While the burden of regulations has somewhat been lessened by the enactment of incentives and enabling regulations, the cumulative effect of all regulations can lead to a long road for the establishment of an industrial enterprise.

For the purposes of this paper, "industry" means manufacture, and an industrial enterprise or project is one which fits the definition of Law of Industrial Investment No. 20 of 1998, Article 5:

An industrial enterprise shall mean any enterprise mainly intended to produce a commodity for final consumption or a capital or intermediary commodity including software. This shall be done through conversion of form or composition on condition that work in the enterprise is run by machinery.

While there are significant incentives and even land grants possible through the Investment Law no. 13 of 2006 and the Industrial Investment Law no. 20 of 1998, there are also significant regulatory hurdles to a person who wishes to start a factory. These are in the basic difficulties of starting a business in Iraq, plus strict requirements on employment.

Beyond the already-burdensome process of starting and registering a business, the industrial project faces special regulations regarding its location, operation, and employment conditions.

2. Starting the Industrial Project

"Industry" is classified as "commercial activity" under Article 5 of the Law of Commerce No. 30 of 1984. All persons conducting commercial activity must register as a "trader" and obtain a "trade name" with the Federation of Chambers of Commerce. The process of registering a trade name costs about \$450 in official fees. The fees are the means of sustaining the Chambers of Commerce. The process can take up to 40 days, depending on the location of the industrial project.

For many purposes, including competing for government contracts, registration of a company will be required. This will require registration with the Company Registrar of the Ministry of Trade under Law No. 21 of 1997 as amended. Registration of a trade name is also a prerequisite of company registration. The process of company registration may vary according to the interpretation of laws and regulations, for example, some activities may require approval by the ministry governing their sector, for example company providing local wireless services may require the approval of the Ministry of Communications, and incorporation of industrial projects may require the approval of the Ministry of Industry and Minerals. Companies in Iraq are limited to conducting business in their declared activity,

which must be specific. Declaring a general intent to conduct lawful business will not satisfy the Companies Registrar.

3. Investment Licenses

With registration as a trader and legal personality as a company in hand, the industrial project must obtain a site and licenses for any investment incentives it wishes to take advantage of.

Both the Industrial Development Authority of the Ministry of Industry and Minerals (IDA) and the National or Provincial Investment Commissions have the ability to allocate land and provide tax relief for industrial projects. Each has a different governing law, however.

The IDA is principally governed by the Industrial Investment Law No. 20 of 1998. This law is only available for Iraqis. The benefits available from Law 20 of 1998 are:

- government land for leasing to an industrial project
- exemption from real estate taxes and customs and stamp duties
- exemption from profit sharing under Law 101 of 1964;
- up to 30% exemption from income tax, depending on type of enterprise and location

In order to obtain these benefits, the industrial enterprise is required to obtain an environmental certificate from the Ministry of Environment and have its procurement list of production machinery notarized and submitted to the IDA in order to prove that the project is industrial in nature..

The National and Provincial Investment Commissions are governed by the Investment Law No. 13 of 2006, as amended by Law No. of 2010 and interpreted by Council of Ministers Regulation No. 2 of 2009 and System 7 of 2010 for land allocation process.

The Investment Law process is open to both Iraqis and foreigners. Applications for projects of larger size and designated as "strategic federal" investments are administered by the National Investment Commission. More modest projects are applied for through the Provincial Investment Commission. This law also promises significant incentives for projects.

- expatriation of profits and capital
- renewable land leases of up to 50 years
- foreign ownership of land designated for housing projects
- exemption from all fees and taxes for ten years
- customs exemption for import of capital equipment

The tax benefits under the Investment Law No 13 of 2006 are significantly broader than those given by the Law of Industrial Investment No. 20 of 1998. Land can be allocated for Investment Commission projects from municipalities and from the Ministry of Finance, which holds title to government land. System 7 of 2010, a Council of Ministers regulation, provides

for committees drawn from the Investment Commission, the municipality, the Finance Ministry Tax Commission and the Real Estate Registration directorate of the Ministry of Justice

However, since the IDA already has land in industrial parks under its jurisdiction, land may be more easily obtained from it for an industrial project than from the Investment Commissions, which have no preexisting land grant.

Another opportunity to obtain land and services for an industrial project - here designated as "industrial services" describing service and repair shops - is presented by Law No. 30 of 2000, Industrial Services. According to its implementing Regulation No. 9 of 2000:

industrial services shall mean the consulting, installation, operation, maintenance and repair of appliances, equipments, machinery and vehicles or replacement of non-functional parts and such services are offered for a charge.

Industrial services enterprises are able to occupy shops in industrial parks constructed for this purpose by the Ministry of Labor and Social Affairs (MOLSA). These industrial services enterprises are supervised by MOLSA, for example, examinations can be given to the technicians working in the shops.

4. Site Location

The Ministry of Industry and Minerals has established several industrial parks around Iraq, outside major municipalities. This land is available for development under the Law of Industrial Investment (IDA) and the Investment Law (Investment Commissions). As mentioned above, the Ministry of Labor and Social Affairs also has sites available for "industrial services" repair shops.

Other state land could be available for lease or purchase through the Law of Sale and Lease of State Properties No. 32 of 1986. This law requires that land released for sale or lease be offered for competitive bidding. Land allocated under the Investment Law and its associated System 7 of 2010 and Law of Industrial Investment can be exempt from this competitive bidding requirement.

For all but the most remote industrial park sites and Free Zones governed by the Ministry of Finance Free Zones Authority under Law No. 3 of 1998, municipal or provincial government approval will likely be needed. This is because Law No. 21 of 2008, the Law of Governorates, gives local governments general supervisory power and often budgetary authority over the operation of executive branch ministries in their jurisdiction. Thus, a provincial council will often have a vote in whether land is allocated by a ministry to an industrial project.

In addition to control over land allocation, provincial and municipal governments will also have control over building permits. The process for obtaining a building permit starts at the municipal government, such as Amanat Baghdad. Building and plot plans and the title deed or lease contract for the land must be submitted and reviewed. The technical directorate reviews the design plan for the building. Permission for water, sewer, electrical and telephone connections is also required from the offices of the municipality, and the Ministries of Electricity and Communications respectively.

5. Environmental Clearance

Industrial projects are subject to Law No. 27 of 2009, Environmental Protection Act. This law establishes a Council of Environmental Protection in each province which oversees the enforcement of environmental standards. For projects which involve chemicals, air emissions, waste water disposal, environmental impact studies must be conducted for review by the Ministry of Environment and the Council.

Article 10 of the Law states:

First: The owner of any project must submit a report to assess the environmental impact prior to commencement which includes:

A - Determination of the positive and negative impacts of the project on the environment

B - the means proposed to prevent and address the causes of pollution in order to achieve compliance with environmental regulations and instructions.

C - potential precautions for pollution emergencies and measures to be taken to prevent their occurrence.

D - possible alternatives to the use of technology which are less harmful to the environment and rational use of resources.

E - reduction of waste and recycled or reused whenever possible.

and - assessment of the environmental feasibility of the project and estimate the cost of pollution relative to production.

In addition to the environmental clearances required by the Ministry of Environment in conjunction with the local Environmental Council, each municipality has an environmental department which issues clearances for development projects for solid waste removal issues.

6. Occupational Health Inspections

Every employer in Iraq is subject to occupational safety and health inspections conducted by the National Center for Occupational Health and Safety of the Ministry of Labor and Social Affairs. The scope of these inspections is covered by Labor Law No. 71 of 1987, and includes environmental and safety hazards. MOLSA also enforces wage and hour standards, and special working conditions for women, which limit their exposure to hazardous materials. The Ministry of Health Public Health Directorate also inspects workplaces for health and safety conditions.

7. Trademarks, Intellectual Property and Product Standards

If the manufacturer is producing a brand-name product, the trademark must be registered with the trademark registry of the Ministry of Industry and Minerals. Iraqi trademark law and practice places an emphasis on the formalities of registration, so trademark protection is not likely to be established by means of using the trademark in the marketplace. Even internationally known brands such as Nestlé have had problems enforcing their trademarks in Iraq against the competing claims of others who have preemptively registered them or have a claim based upon a commercial agency contract.

Patents and the enforcement of technical product standards are the responsibility of the Central Office of Standards and Quality Control (COSQC) of the Ministry of Planning.

COSQC also certifies the origin of "Made in Iraq" products. Rather than relying on other international standards, COSQC develops its own product standards for manufactured goods, which are published in the Iraqi Official Gazette.

8. Recommendations

The potential industrial investor in Iraq faces many hurdles. First, there are the well-known issues of starting a business in Iraq. Second, confusion in the legal incentives to industrial investment lead to painful choices: do you choose the tax holidays of the Law of Investment No. 13 of 2006 and the Investment Commissions, or the easier land allocation available through Law No. 20 of 1998 and the Industrial Development Authority? The overlapping regulatory jurisdictions of provincial and national governments also complicates the land allocation and environmental permitting issue.

The first recommendation is to consolidate and harmonize the processes of the Law of Industrial Investment No. 20 of 1998 with those of Investment Law 13 of 2006. There is no reason why the tax and customs exemptions should be less for the Industrial Investment Law administered by the IDA. Law 20 of 1998 should be amended to make the tax and customs benefits identical with Law 13 of 2006.

Second, a better land allocation and permitting process is needed. This would require the municipal government, Ministry of Environment, and the IDA and Investment Commissions to agree on a harmonized procedure which would reduce the time and expense of obtaining land and the permission to establish an industrial enterprise on it.